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OFFICE OF PETITIONS

In re Application of :
Philip J. Simpson et al :
Application No. 10/771,093 : **DECISION ON PETITION**
Filed: February 2, 2004 :
Attorney Docket No. 029011/0308042 :

This is a decision on the petition, filed September 21, 2006, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notice To File Missing Parts Of Nonprovisional Application mailed August 4, 2004. Applicant was given Two Months from the mail date to file the reply.

Petitioner asserts that the Notice dated August 4, 2004 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record (The address was recorded from the Declaration and Power of Attorney submitted with the application on filing of the above application).

In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and

3. a copy of the docket record where the nonreceived Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner's statement.

Additionally, Office records do show that mail was returned as undelivered on August 24, 2004 and on April 26, 2005. The Office did not remail the Notice(s) to another address that was associated (transmittal letter submitted with the application on filing) with the above file.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993). The petition satisfies the above-stated requirements.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Office of Initial Patent Examination for re-mailing of the Notice To File Missing Parts Of Nonprovisional Application.

A handwritten signature in cursive script, reading "Karen Creasy".

Karen Creasy
Petitions Examiner
Office of Petitions